IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Axel E. Elfner	Confirmation No.:	3099
Serial No.:	10/791,566	Group Art Unit:	2145
Filed:	03/02/2004	Examiner:	Pollack, Melvin H.

Title: FACILITATING THE SENDING OF MAIL FROM A RESTRICTED COMMUNICATIONS NETWORK

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Rosalind Q. Spiller

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Date of Signature: January 15, 2010.

To: Mail Stop Appeal Briefs – Patents
Commissioner for Patents
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APPELLANT'S REPLY BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Dear Sir:

In reply to the Examiner's Answer mailed on November 16, 2009, Appellant submits this Reply Brief in triplicate under 37 C.F.R. 1.193(b). It should be noted that this C.F.R. section was amended to remove the requirement that a reply be directed only to new points of argument in the Answer. Any Reply Brief is due by January 15, 2010 without extension. Therefore, this Reply Brief is being timely filed.

ARGUMENT

Issue No. 1

With regard to the non-analogous art sub-issue, the Answer alleges on page 7 that Appellant argued in his brief "that it cannot be in the field of the applicant's endeavor nor pertinent to the problem unless it is a 102 rejection." However, Appellant argued nothing of the sort; indeed, non-analogous art is only relevant for obviousness rejections.

The Answer also misinterprets the Appeal Brief comment regarding the non-analogous art test involving looking at a given reference alone. In the undersigned's experience, many times it is alleged that reference A, which is analogous to the given application, is also analogous to reference B, such that reference B must therefore be analogous to the application as well. The comment was merely an attempt to state that each reference in an obviousness rejection is reviewed for analogousness alone against the application, not against other references. Of course, the scope of the claims is a factor, and Appellant pointed that out in the Appeal Brief, for example, at page 8.

Appellant notes the many references in the Answer to the KSR decision. However, it is also noted that these references, and the KSR decision in general, are directed to obviousness, and not the non-analogous art test. The same is true for other citations, e.g., Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. In addition, most, if not all the examples given in the Answer are apparatus-based mechanical inventions. Appellant submits it is much easier to see how elements in such inventions have broader uses in other mechanical inventions with a

different purpose. In contrast, the presently claimed invention is a method; in particular, a method of sending mail from a restricted communication network.

With regard to the field of endeavor, Appellant agrees that the scope of the claims is also a consideration, and commented on that aspect in the Appeal Brief. It is not just the preamble of claim 1, for example, that focuses on mail, but the entire body of the claim as well. However, even if we assume for the sake of argument that the field of endeavor is the sending of data (versus email) from a restricted network, Afergan still fails this first step in the non-analogous art test. There is no indication in Afergan that user requests come from a restricted network, or that the content comes from a network with outgoing restrictions. If the claims are not interpreted to refer to outgoing restrictions, then there is no difficulty getting mail out and no point to the claim. The background and the description all support such an interpretation.

As the Answer itself points out at page 12, Afergan shields against incoming attacks, but says nothing about restrictions on outgoing content. Of course, since the whole point of Afergan is to shield the servers from incoming attacks, there is no need to address outgoing restrictions, as that is not the problem in Afergan. Thus, it is no wonder why there is also no teaching in Afergan of issues with outgoing restrictions on user requests for content. This is not cynical, as alleged in the Answer; if one attempts to analogize to claim 1, the "data" is the email, and the claim seeks to get the email out of the restricted network. The comment on user requests is to show there is simply no issue of outgoing restrictions in Afergan.

The Answer attempts to expand the scope of the claims to circumventing security generally, whether incoming or outgoing. However, even a cursory review of claim 1 reveals the

focus on mail in the preamble and body, and getting mail *out of* the restricted communication network. Indeed, such is clear from the entirety of the disclosure, including the background. The Answer seeks to peel away the limitations in order to apply art outside the fair scope of the claims.

With respect to Yoshida, the Answer simply alleges that even though it addresses receiving email, the email must come from somewhere, such that it somehow has relevance to outgoing mail. Of course all email comes from somewhere, but the focus in Yoshida is not outgoing email, but incoming email. The problem and the end of the communications network addressed by Yoshida are simply different from that of the present invention. With regard to Afergan, the Answer alleges at page 13 that "unless the sole purpose of the network is to keep anyone from ever accessing the content, any such art must also be concerned with allowing proper responses of content to get around the protections." However, the fact is the protections all have to do with making sure the incoming requests are valid, and once those incoming restrictions are satisfied, the content is sent out without needing to circumvent outgoing restrictions (in fact, there are no outgoing restrictions mentioned).

The Answer goes on to quote at page 13 from paragraph 11 of Afergan, apparently in an attempt to show relevance to getting content out of a restricted network. However, the quoted language clearly speaks only to protections for the server from improper requests. The language "end users of a protected site" refers to user requests to a site that is protected by the Afergan shielding technique. The fact is that there are no restrictions on outgoing content, all the protections are for the incoming direction.

The Answer also attempts to make Yoshida seem relevant to outgoing network restrictions on email, citing paragraph 37 thereof. However, a careful review of that paragraph reveals that a request for mail from a client-side server (i.e., an incoming mail request) is authenticated by the central mail server. If the request is from an authorized client-side mail server, then the central mail server simply sends the mail to it and then deletes it. This scenario is actually exactly like Afergan, in that there are no restrictions on sending the mail out once the requesting server is authenticated. Thus, the only restrictions are on the incoming requests.

The Answer makes much of alleged dire policy results if either or both of Afergan and Yashida are found to be non-analogous art. Aside from being alarmist and dramatic, it simply misses the point that every aspect of the application supports the scope proposed, not just an allegedly narrowly drawn background. Appellant has never proposed simply looking at the background; the technical field, the detailed description and the claims all support the scope proposed, i.e., getting email out of a network with outgoing restrictions. If the use of "data" in certain parts of the application is considered determinative, there is certainly no deviation from getting the data out of a network with outgoing restrictions.

Incredibly, the Answer then proceeds to suggest that "if the examiner is found incorrect," i.e., that Afergan and Yoshida are found to be non-analogous art, then Appellant should narrow the claims. Appellant does not agree. Further, the Answer alleges "one or two limitations" could have easily been added; yet nowhere in prosecution or in the Answer has any suggestion for such easy limitations been offered. Indeed, Appellant takes the position that no further limitations are required by the cited art.

The Answer uses the oft-quoted "attacking references individually" of In re Keller, yet throughout prosecution and in the final Office Action, only individual references are specifically cited against the individual limitations of a given claim. Appellant is merely addressing the actual rejections. Moreover, Appellant does address the other art cited in the combination. For example, after addressing the citations in the final Office Action to Afergan, the Appeal Brief adds that Yoshida does not remedy the shortcomings of Afergan, and goes to explain why Yoshida does not remedy the shortcomings of Afergan. Still further, the Appeal Brief notes that the combination of the two also fails to remedy the shortcomings of each. Thus, Appellant has not merely attacked the references individually.

With regard to Appellant's position that there is no motivation to combine Afergan and Yoshida, the Answer alleges that "one of ordinary skill in the art would recognize the significant benefit of improving Afergan by applying the lessons of Yoshida: an Afergan network with greater shielding and protection, and with a lower resource stress on the network." Yet, nowhere is it explained how Afergan would be changed, or what "lessons" in particular are to be derived from Yoshida. Indeed, the rejection merely alleges that "one of ordinary skill in the art would have added Yoshida's mail server and content retrieval system to Afergan's content retrieval system with mail server embodiment…" Appellant submits this does not begin to explain why one of ordinary skill would combine the two systems, what such a system would resemble, or how such a combined system would perform to provide the alleged improvements or what is claimed.

With regard to the automatically checking aspect of claim 1, the Answer alleges that in Afergan "…content is delivered even when no end-user requests are forthcoming." Appellant

respectfully find no teaching or suggestion in Afergan to deliver content even when none is requested. Indeed, to whom would the content be delivered? Afergan teaches caching of content at the content servers, but that is done in response to requests for that content, and any subsequent delivery of the cached content is also in response to end-user requests.

Regarding the claim 1 phrase "...a communications unit external to a restricted communications network...," the Answer attempts to allege that it is somehow vague. Appellant submits the language is actually fairly simple and straight forward; the communications unit that checks for mail from the restricted communications network is external to the network. The Answer then goes on to allege one skilled in the art would read the claim language to mean that a component of the communications unit is external, while the rest is internal to the network. Appellant could not disagree more; this reads language into the claim that simply is not there.

The Answer at page 20 misunderstands the second full paragraph on page 12 of the Appeal Brief. The intent was to note the one location in Afergan where the word "restricted" is used, but the portion prior to the quoted phrase is the key; that the servers are located in another region of a content delivery network. It is this teaching that shows the servers are part of the same network as the origin server, albeit in different regions. Further, the allegation in the Answer that one of ordinary skill would assume machines in the same network access each other under less restricted circumstances misses the point. The servers, acting in the role of clients, actually are accessing the origin server under less secure circumstances that actual clients (end users) that are restricted from access altogether.

Further down page 20 of the Answer, it is alleged that "the claims focus on restricted communications networks and on sending requests for mail to be sent would focus the mind of one of ordinary skill in the art that the claims are about a restricted communication network receiving and protecting email until it ready to be delivered." Appellant could not disagree more. The problem is the restriction on outgoing email altogether, not protecting email. Indeed, as set forth clearly in the background, such restricted communications networks block outgoing email for security concerns. However, as noted also, there are legitimate administrative needs to send email (logs, etc.) even in such restricted networks. As explained, manual intervention is used in these cases to allow administrative emails to go out, and the present invention seeks to remove the need for manual intervention.

Thus, the focus is allowing necessary email to get out of a restricted network (yet still restricting email generally) without having to resort to manual intervention. Thus, it is clear from the disclosure what is meant by "restricted communications network." Appellant submits the claims agree. For example, the preamble of claim 1 recites a method of facilitating the sending of mail from a restricted communications network. Even ignoring the clear focus of the disclosure, if the restrictions were not on outgoing mail, then why would there even be a need for a method to facilitate sending mail? The steps are clearly drawn to getting mail out of a network with outgoing email restrictions, and Appellant submits such would be clear to one of ordinary skill in the art. Thus, Appellant submits it is merely a common sense reading of the claim, not some overly narrow interpretation as alleged in the Answer.

With regard to claim 5, the Answer alleges that "…the purpose of Afergan is to send content, i.e., mail, outside of the network, albeit in a controlled manner." Even ignoring that

simply sending mail out of a network would not even be patentable and Afergan clearly focuses on the shielding technique, the fact remains that this is not what is claimed, and what is actually claimed is not taught or suggested by the cited art.

Regarding claim 6, the Answer alleges that "data structure" includes disk drives and other storage. However, these are physical things; a data structure is abstract, referring to the arrangement of the data, not the physical storage itself.

With regard to claims 8 and 10, the Answer alleges that "forwarding" is taken to mean "merely sending the content outside of the protected network." However, this ignores that the communications unit in claim 1 (from which claim 8 depends) is already recited as being external to the restricted communications network. Thus, the mail leaves the restricted network when retrieved by the communications unit, not as part of the forwarding of claim 8.

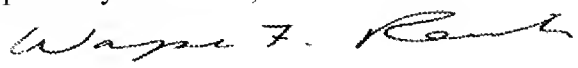
Issue No. 2

Regarding claim 9, the Answer alleges that "Minuzo clearly shows a restricted network, and content sent to a receiver (the external communications unit) to which the content is intended." Again, however, this ignores that the claims are clearly directed to communications networks with outgoing restrictions; if interpreted otherwise, then the claims make no sense as noted above. Minuzo, like the other cited art, clearly has incoming restrictions, not outgoing restrictions.

CONCLUSION

In conclusion, Appellant submits that none of claims 1-3, 5, 6, 8, 10 and 11 is obvious over Afergan, that claim 7 is not obvious over Afergan and Yoshida in view of Banister et al., that claim 9 is not obvious over Afergan and Yoshida and further in view of Mizuno et al.; and that claim 12 is not obvious over Afergan and Yoshida, and further in view of Clarke et al. Therefore, Appellant continues to submit that the final Office Action should be reversed in all respects.

Respectfully submitted,



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